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FACSIMILE TRANSMITTAL

TO:	FROM:
Name: Office of Initial Patent Examination	Name: Thomas H. Martin, Esq.
Firm: U.S. Patent & Trademark Office	Phone No.: 330-877-2277
Fax No.: 703-746-9195	No. of Pages (including this): 13
Subject: U.S. Patent Application No. 10/692,545	Date: December 18, 2003
Gary K. Michelson, M.D.	Confirmation Copy to Follow: No
Filed: October 24, 2003	
DISTRACTOR FOR USE IN SPINAL SURGERY	
Attorney Docket No. 102.0003-05000	
Customer No. 22882	

Message:

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

I hereby certify that the attached Transmittal Form (in duplicate; \$18.00 additional claims fee charged to Deposit Account No. 50-1068), Amendment, and Request for Interference Under 37 C.F.R. § 1.604 are being facsimile transmitted to the U.S. Patent and Trademark Office on December 18, 2003.


Sandra L. Blackmon

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FORM PTO-1083

Attorney Docket No.: 102.0003-05000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Gary K. Michelson, M.D.

Serial No: 10/692,545

Filed: October 24, 2003

For: DISTRACTOR FOR USE IN SPINAL
SURGERY

(Group Art Unit: 3731)

(Examiner: U. Ho)

Office of Initial Patent Examiner
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Transmitted herewith is an Amendment in the above-identified application.

- ☐ No additional fee is required.
- ☐ Applicant hereby requests a ***month extension of time to respond to the above office action.
- ☐ Request for Interference Under 37 C.F.R. § 1.604 is enclosed.

The fee has been calculated as shown below:

The fee has been calculated as shown below:							
	(Col. 1) CLAIMS REMAINING AFTER AMENDMENT		(Col. 2) HIGHEST NUMBER PREVIOUSLY PAID FOR		(Col. 3) PRESENT EXTRA.*	LG/SM \$ ENTITY FEE	ADD'L FEE DUE
TOTAL CLAIMS FEE	32	-	31	**	1	LG=\$18 SM=\$9	\$ 18.00
INDEPENDENT CLAIMS FEE	3	-	3	***		LG=\$86 SM=\$43	\$ -0-
FIRST PRESENTATION OF MULTIPLE DEPENDENT CLAIMS					LARGE ENTITY FEE = \$290 SMALL ENTITY FEE = \$145		\$ -0-
TOTAL							\$ 18.00

* If the entry in Col. 1 is less than the entry in Col. 2, write "0" in Col. 3.

** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 20, write "20" in this space.

*** If the "Highest Number Previously Paid For" IN THIS SPACE is less than 3, write "3" in this space. The "Highest Number Previously Paid For" (Total or Independent) is the highest number found from the equivalent box on Col. 1 of a prior amendment or the number of claims originally filed.

- ☒ A fee in the amount of \$18.00 to cover the additional claims is to be charged to Deposit Account No. 50 1068.
- ☐ A check in the amount of \$_____ to cover the three month extension of time fee is enclosed.
- ☒ The Commissioner is hereby authorized to charge any deficiencies of fees associated with this communication or credit any overpayment to Deposit Account No. 50-1068. A copy of this sheet is enclosed.
- ☒ Any filing fees under 37 C.F.R. § 1.16 for the presentation of extra claims
- ☒ Any patent application processing fees under 37 C.F.R. § 1.17

Respectfully submitted,
MARTIN & FERRARO, LLP

Date: December 18, 2003

By: Thomas H. Martin
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PATENT
Attorney Docket No. 102.0003-05000
Customer No. 22882

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
)
Gary K. Michelson, M.D.)
)
Serial No.: 10/692,545) (Group Art Unit: 3731)
)
Filed: October 24, 2003) (Examiner: U. Ho)
)
For: DISTRACTOR FOR USE IN)
SPINAL SURGERY)

Office of Initial Patent Examination
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

REQUEST FOR INTERFERENCE UNDER 37 C.F.R. § 1.604

Applicant hereby requests an interference with U.S. Application No. 10/213,864 (U.S. Publication No. 2002/0193802) to Zdeblick et al. (hereinafter, "Zdeblick '802") pursuant to 37 C.F.R. § 1.604(a). A proposed count is attached hereto.

Claim 14 of Zdeblick '802 corresponds to claim 1 of the proposed count. Claim 32 of the present application also corresponds to claim 1 of the proposed count.

Applicant requests an interference with Zdeblick '802 because the aforementioned claim of Zdeblick '802 covers subject matter which was invented by Applicant prior to the earliest priority date of Zdeblick '802.

Request for Interference 12-18-03

Applicant submits that the subject matter of claim 1 of the proposed count is fully supported by Applicant's original disclosure, for example, on page 28, line 3 to page 30, line 2 of the specification and Figs. 2-4. The Examiner is requested to declare an interference between the present application and U.S. Application No. 10/213,864.

If there is any fee due in connection with the filing of this Statement, please charge the fee to our Deposit Account No. 50-1068.

Respectfully submitted,

MARTIN & FERRARO, LLP

Date: December 18, 2003

By: 

Amedeo F. Ferraro
Registration No. 37,129

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PROPOSED COUNT UNDER 37 C.F.R. § 1.604(a)(1)

1. A distraction device for distracting the disc space between adjacent vertebrae, comprising:

an elongated stem having a height corresponding to a desired height of distraction for the disc space, said stem having a first end and a second end defining a longitudinal axis therebetween and a length along said axis that is sized to be maintained within the disc space when said elongated stem is driven into the disc space; and

a flange at said first end projecting outward from said longitudinal axis of said stem, said flange having a bone contacting face for contacting at least one of the vertebrae when said stem is driven into the disc space and for transmitting a reduction force to the vertebra upon application of an external force to the distraction device.